

TITLE 2. ADMINISTRATION**CHAPTER 5.1. STATE PERSONNEL BOARD**

(Authority: A.R.S. § 41-781 et seq.)

Laws 1983, Ch. 98, § 162 limited authority of the Personnel Board. Prior rules and regulations for the Board were found in A.C.R.R. Title 2, Chapter 5, now consisting of rules and regulations of Personnel Administration, Department of Administration.

ARTICLE 1. GENERAL PROVISIONS

Section

- R2-5.1-101. Definitions
- R2-5.1-102. Personnel Board Procedures
- R2-5.1-103. Appeal Procedures
- R2-5.1-104. Complaint Procedures

ARTICLE 1. GENERAL PROVISIONS**R2-5.1-101. Definitions**

Unless the context requires otherwise, the following definitions govern in this Chapter:

1. "Agency," for purposes of appeal from a disciplinary action, means an employing state entity that takes an appealable disciplinary action against an employee in state service as defined by A.R.S. § 41-762.
2. "Appeal" means a written request filed with the Board by a permanent employee in state service seeking relief from dismissal, demotion, or suspension of more than 40 working hours.
3. "Appellant" means a permanent employee in state service who files an appeal with the Board.
4. "Complainant" means an employee or former employee as defined in A.R.S. § 38-531 who files a complaint with the Board.
5. "Complaint" means a written request for relief under A.R.S. § 38-532 filed with the Board by an employee or former employee who believes a prohibited personnel action was taken against the employee or former employee as a result of the employee's or former employee's disclosure of information under A.R.S. § 38-532.
6. "Day" means a calendar day, unless otherwise stated.
7. "Deposition" means a form of discovery in which testimony of a witness is given under oath or affirmation, subject to cross-examination, and recorded in writing, before a hearing.
8. "Hearing" means an administrative proceeding at which the appellant or complainant and the respondent are given the opportunity to be heard by oral or written presentation of evidence.
9. "Hearing officer" means a person employed or appointed by the Board, the Board's chair, or any member of the Board designated by the Board's chair acting as the trier of fact.
10. "Respondent" means an agency or individual whose interests are adverse to those of an appellant or complainant or who will be directly affected by the Board's decision.
11. "Subpoena" means a formal legal document issued under authority of the Board to compel the appearance of a witness at a hearing.

Historical Note

Adopted effective November 10, 1983 (Supp. 83-6).
Former Section R2-5.1-101 renumbered to R2-5.1-102;
new Section R2-5.1-101 adopted by final rulemaking at 7
A.A.R. 44, effective December 13, 2000 (Supp. 00-4).
Amended by final rulemaking at 9 A.A.R. 22, effective
February 7, 2003 (Supp. 02-4).

R2-5.1-102. Personnel Board Procedures

- A. Regular meetings. At each public meeting, the Board shall announce the time and place of its next regular monthly meeting. The Board shall give notice as required by law.
- B. Special meetings. The chair of the Board may call special meetings of the Board. The Board shall give notice as required by law.
- C. Emergency meetings. In the case of an emergency, the chair or vice chair of the Board may call a meeting. The Board shall give notice as required by law.
- D. Agenda. The Board shall consider only matters placed on the agenda. The agenda shall be mailed to each member of the Board at least five business days before the meeting.
- E. Notice to agencies. At least five business days before a meeting, the Board shall mail a copy of the agenda to a state agency indicating an interest in receiving the agenda. The Board's failure to mail the agenda, or failure of an agency to receive the agenda, does not affect the validity of the meeting or of any action taken by the Board at the meeting.
- F. Notice to parties. The Board shall give notice of a meeting as required by law to all parties in a matter scheduled for a Board meeting.
- G. Minutes. The Board shall record in the Board's minutes the time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested by a member, a member's dissent with the member's reasons. Board staff shall write the minutes and shall present the minutes for approval by the Board members at the next regular meeting. The Board shall provide copies of the approved minutes to the appellant and respondent within seven days of the regular meeting at which the minutes are approved.

Historical Note

Adopted effective November 10, 1983 (Supp. 83-6).
Amended subsection (B)(2) effective March 3, 1988
(Supp. 88-1). Corrections to subsections (B)(2) and (4)
from revised format edition published February 1991
(Supp. 96-1). Former Section R2-5.1-102 renumbered to
R2-5.1-103; new Section R2-5.1-102 renumbered from
R2-5.1-101 and amended by final rulemaking at 7 A.A.R.
44, effective December 13, 2000 (Supp. 00-4). Manifest
typographical error corrected in Section heading (Supp.
01-2). Amended by final rulemaking at 9 A.A.R. 22,
effective February 7, 2003 (Supp. 02-4).

R2-5.1-103. Appeal Procedures

- A. Appeal. A permanent status employee who wishes to appeal a disciplinary action shall, no later than 10 business days from the effective date of the action, file a written appeal with the Board in accordance with A.R.S. § 41-785. The appeal shall include:
 1. The appellant's name, address, and telephone number;
 2. The name of the agency taking the disciplinary action being appealed;
 3. The name, address, and telephone number of the appellant's representative, if applicable;
 4. The action requested of the Board; and

5. A specific response to the causes for disciplinary action upon which the appeal is based.
- B.** Change of address. A party shall notify the Board of a change of address or telephone number.
- C.** Routing of appeal. The Board shall provide a copy of an appeal to the respondent at the respondent's last known address within five business days from the date of filing.
- D.** Hearing officer. The Board or the Board's chair may assign an appeal or may direct staff administratively to assign an appeal to a hearing officer for hearing. When an appeal is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is fully empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of an appeal to a hearing officer does not preclude the Board or the Board's chair from withdrawing the assignment and conducting the hearing itself or from reassigning the appeal to another hearing officer.
- E.** Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last date of the hearing.
- F.** Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the appeal by the Board, and, if requested, shall assist and advise the Board.
- G.** Time for hearing. The Board shall hold a hearing on an appeal within 30 days from receipt by the Board of an appeal unless the Board finds good cause to extend the time.
- H.** Notice of hearing. The Board shall provide the appellant and respondent with written notice of the time, date, and place of hearing of an appeal, and the name of the hearing officer at least 20 days before the date of the hearing.
- I.** Nature of hearing; rules of evidence. Every hearing shall be open to the public unless the appellant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The appellant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- J.** Prehearing conference. The Board or the Board's hearing officer may require the appellant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.
- K.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.
- L.** Exclusion of witnesses. Upon the motion of an appellant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.
- M.** Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the appellant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.
- N.** Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- O.** Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- P.** Proposed findings of fact. Both appellant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the appellant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection (F).
- Q.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the appellant and respondent. The appellant or respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.
- R.** Personnel Board decision. Within the time required by law, the Board shall notify the appellant and respondent of the time and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, or reject the hearing officer's proposed findings of fact and conclusions of law in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or may make any other disposition of the appeal allowed by law. The Board shall make a decision on the appeal in an open meeting within 45 days after the conclusion of the hearing and shall send a copy of the decision to the appellant and respondent by certified mail, return receipt requested. If the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay in the amount and for the period the Board determines to be proper.
- S.** Appeal of Board decision in court. The appellant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 41-785.

Historical Note

New Section renumbered from R2-5.1-103 renumbered from R2-5.1-102 and amended by final rulemaking at 7 A.A.R. 44, effective December 13, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4).

R2-5.1-104. Complaint Procedures

- A.** Complaint. A state employee or former employee who wishes to file a complaint shall, no later than ten days from the effective date of the alleged prohibited personnel practice that is the subject of the complaint, file a written complaint with the Board in accordance with A.R.S. § 38-532. The complaint shall include:
1. The complainant's name, address, and telephone number;
 2. A clear and concise statement of the facts constituting the alleged prohibited personnel practice;
 3. The name of the state agency or state employee believed to have knowingly committed the prohibited personnel practice;
 4. The date and place of the alleged prohibited personnel practice; and
 5. The name, address, and telephone number of the complainant's representative, if applicable.
- B.** Change of address. A party shall notify the Board of a change of address or telephone number.
- C.** Routing of complaint. The Board shall provide a copy of a complaint to the respondent at the respondent's last known address within five business days from the date of filing.
- D.** Amending a complaint. A complainant may move to amend a complaint. An amendment shall relate only to the facts and circumstances under the original complaint and shall not relate to new causes of action. The hearing officer shall grant or deny the motion or shall refer the motion to the Board for disposition.
- E.** Hearing officer. The Board or the Board's chair may assign a complaint or may direct staff administratively to assign a complaint to a hearing officer for hearing. When a complaint is assigned to a hearing officer, the hearing officer is the authorized representative of the Board and is fully empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings that the Board is authorized by law to take other than making the final findings of fact, conclusions of law, and order. The assignment of a complaint to a hearing officer does not preclude the Board or the Board's chair from withdrawing the assignment and conducting the hearing itself or from reassigning the complaint to another hearing officer.
- F.** Hearing officer report. The hearing officer conducting the hearing shall write proposed findings of fact, conclusions of law, and a recommendation, as well as a brief statement of reasons for the hearing officer's findings and conclusions and shall submit to the Board the proposed findings of fact, conclusions of law, and recommendation within 30 days of the last date of hearing.
- G.** Conclusion of hearing. The Board shall consider the hearing concluded when it receives a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation or, if objections are filed, on the date the objections are filed. At the discretion of the Board, the hearing officer may be, but need not be, present during the consideration of the complaint by the Board, and, if requested, shall assist and advise the Board.
- H.** Time for hearing. The Board shall hold a hearing on a complaint within 30 days from receipt by the Board of a complaint unless the Board finds good cause to extend the time.
- I.** Notice of hearing. The Board shall provide the complainant and respondent with written notice of the time, date, and place of hearing of a complaint, and the name of the hearing officer at least 20 days before the date of the hearing.
- J.** Nature of hearing; rules of evidence. Every hearing shall be open to the public unless the complainant requests a confidential hearing. If the hearing involves evidence the state is precluded by law from disclosing, the Board or the Board's hearing officer shall grant a request for a confidential hearing by the respondent. The complainant, respondent, or hearing officer may request that portions of the record be sealed or adequately protected if testimony of a witness is of a sensitive nature. Any party may be self-represented or may designate a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding. All witnesses shall testify under oath or by affirmation, and a record of the proceeding shall be made and kept by the Board for three years. Hearings shall be conducted in a manner that ascertains the substantial rights of the parties. The Board, a Board member, or a hearing officer is not bound by common law, statutory rules of evidence, or technical or formal rules of procedure, except the rule of privilege as recognized by law.
- K.** Prehearing conference. The Board or the Board's hearing officer may require the complainant and respondent to attend a prehearing conference. Any agreements reached at that conference shall be binding at the hearing.
- L.** Exhibits. A party introducing an exhibit shall furnish the Board or the Board's hearing officer and the opposing party with a copy of the exhibit before or at the beginning of the hearing.
- M.** Exclusion of witnesses. Upon the motion of a complainant or respondent, the hearing officer, in the hearing officer's discretion, may exclude from the hearing room any witness who is not under examination. The hearing officer shall not exclude a party to the hearing or a party's representative.
- N.** Witness fees. Witnesses, other than state employees, when subpoenaed to attend a hearing are entitled to the same fee as is allowed witnesses in civil cases in the Arizona Superior Court. If the hearing officer, on the hearing officer's own motion, subpoenas a witness, fees and mileage shall be paid from funds of the Board upon presentation of a duly executed claim. If the complainant or respondent subpoenas a witness, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to state employees subpoenaed as witnesses is limited to payment of mileage by the party requesting the witness. Mileage shall be paid at the current Arizona Department of Administration reimbursement rate.
- O.** Enforcement of subpoenas. If enforcement of a subpoena for appearance of a witness is necessary, enforcement proceedings shall be taken to Superior Court by the party requesting enforcement, and enforcement shall be determined by the Superior Court and not the Board. The party requesting enforcement shall name the Board as a party to any proceedings. The Board shall follow any orders entered by the court.
- P.** Depositions. Either party may request that a witness' deposition be used as evidence if the presence of a witness cannot be procured at the time of hearing. The hearing officer shall grant or deny the request.
- Q.** Proposed findings of fact. Both complainant and respondent may file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer. If either the complainant or the respondent chooses to file proposed findings of fact and conclusions of law, the filing shall take place before the conclusion of the hearing as defined in subsection (G).

- R.** Objections to findings. The Board shall send a copy of the hearing officer's proposed findings of fact, conclusions of law, and recommendation to the complainant and respondent. The complainant or respondent may file written objections, but not post-hearing evidence, to the hearing officer's proposed findings of fact or conclusions of law with the Board within 15 days from receipt of the hearing officer's proposed findings of fact and conclusions of law and shall serve copies of the objections upon the other party and the Board. The Board shall not consider untimely objections.
- S.** Personnel Board decision. Within the time required by law, the Board shall notify the complainant and respondent of the time and place of the Board meeting at which the complaint will be decided. The Board shall determine the validity of the complaint and whether a prohibited personnel practice was com-

mitted against the employee or former employee as a result of the employee or former employee's disclosure of information of a matter of public concern. If the Board determines a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, the Board shall act in accordance with the requirements of A.R.S. § 38-532.

- T.** Appeal of Board decision in court. The complainant or respondent may appeal the Board's decision to the Superior Court as provided in A.R.S. § 38-532.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 22, effective February 7, 2003 (Supp. 02-4).